1945

File No. O Primary Education/45
Legal Department

A **BRANCH**

Subject:— Opinions under the Bombay Primary Education Act, 1923

CP 25/F

File No. O. Primary Education/45

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C O N T E N T S.

Legal Department File No. O. Prim. Edu. / 1945.

Sr. No.	Compilation No.	Subject	Pages.
		Opinion under the Bombay Primary Education Act, 1923.	
1.	O.No. 2369 dt. 27/3/45.	Question whether (1) Mr. Pathan's appeal should be admitted and (2) whether the inquiry made into his conduct was legally valid and proper.	1-2.
2.	O.No. 4918 dt. 3/7/45.	Sec. 27A(4) Question whether Govt. can issue an order declaring the orders of the Administrative Officer in both the cases to be illegal and ordering him to hold a fresh inquiry.	3-4.
3.	O.No. 5029 dt. 9/7/45.	Question whether the term "building offices" in rule 13 of the Building Grant Rules in Schedule D to the Rules includes repairs to office buildings or whether it relates only to the construction of new office buildings.	5-6.
4.	O.No. 5744 dt. 3/8/45	Sec. 27(3) Question whether Govt. is empowered to substitute a new rule for the one sent to it for sanction.	7-8.
5.	O.No. 6050 dt. 14/8/45.	Sec. 27(2) Question whether it is necessary to publish any amendments to the Model Provident Fund Rules.	9-10.

Vole.N.S. 2317

2		3	4
6.	O.No. 6306 dt. 25/8/45.	Sec. 3A(f), explanation (e) Question whether ~~it is necessary~~ the benefit can be extended to M.N. Dixit, a medical practitioner.	11-12.
7.	O.No. 6660 dt.12/9/45.	Sec.8(2). Question whether it is the duty of the Surat Municipality to get Mr. Pathan, a guaranteed teacher reinstated.	13-14.
8.	O.No. 7011 dt. 24/9/45.	Question whether there is any way of divesting the Poona City Municipality of the building and equipment of the Sangamwadi School except by private negotiation or by recourse to legislation.	15-16.
9.	O.No.7608 dt.15/10/45.	Sec.214 Question whether the order of the Collector, though administratively defensible is intra vires.	17-20.
10.	8244 O.No. ~~82244~~ dt.6/11/45	Question whether in view of the peculiar circumstances, the appeal of Mr. Shah can be admitted and his nomination paper accepted as valid.	21-23.
11.	O.No. 8429 dt.12/11/45	Rule 13, Question whether a case not provided for in a Statute is not be dealt with merely becasue there seems no good reason why it should have been omitted and the omission appears consequently unintentional.	23-24

1.	2.	3.	4.
12.	O.No. 9386 dt.13/12/45	Questions (1) Whether the Primary School teachers, who retired from service before the transfer of control of Primary Education to the local authorities under the Act to be Govt. servants and (2) If such teachers were treated as Govt. servants before the transfer of control of Primary Education to the local authority it would be legal to grant them increased pension from 1-4-45 when Govt. has in fact sanctioned increased pension to all classes of Govt. pensioners from 1-11-43.	25-26.
13.	O.No. 9660 dt. 27/12/45.	Question whether the Postal Dept. can either in law or in equity be held liable to pay Mr. Prabhudas Lalbhai for the period of his suspension.	27-28.

Rele.M.S.
11/7/56.

Office of the R.L.A.

The proviso to clause (b)(iii) of rule 41(1) of the Bombay Primary Education Rules, 1924, contemplates an independent inquiry by the Administrative Officer. The procedure followed in the present case is highly irregular. The inquiry was held by the Sub-Committee of the School Board. The School Board approved of the Sub-Committee's recommendations and authorised the Administrative Officer to take necessary steps in the matter. The inquiry at which the Administrative Officer was present could not be considered to be an inquiry held by the Administrative Officer as contemplated by the proviso to clause (b)(iii) to rule 41(1), nor could the decision ~~xxxxxxx~~ arrived at be deemed to be the independent decision of the Administrative Officer under that clause (b)(iii). Consequently the Order of removal passed by the Administrative Officer in the present case which is nothing short of dismissal is illegal. It would therefore be open to Government to set it aside and if necessary order a fresh inquiry by the Administrative Officer.

Id/-
26/3/45.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 2369, dated the

27th March 1945.

MSR.

Office of the R.L.A.

It appear that one Mrs. Aminaben Rehman Munshi, Head Mistress in the Urdu Girls' School No. 39 and one Mr. Baitullah Khudabux, Urdu Primary teacher, have beenr educed by the Administrative Officer, Shhool Board, Surat mainly on the strength of the resolution passed by the School Board. The question for the consideration of the R.L.A. is whether Government can issue an order under section 27A(4) of the Bombay Primary Education Act, 1923, declaring the orders of the Administrative Officer in both the cases to be illegal and ordering him to hold a fresh inquiry in the matter.

2. Sub-section (4) of section 27A of the Bombay Primary Education Act, 1923, provides that such Administrative Officer shall subject to the general or special orders of the Provincial Government exercise all the powers and perform all the duties which may be exercised and performed by the Administrative Officers appointed under section. This provision empowers Government to pass general or special orders limiting or restricting the powers to be exercised and the duties to be performed by the Administrative Officer under the Bombay Primary Education Act and the rules made thereunder. Here Government proposes to hold the Administrative Officer's exercise of his powers illegal, set aside his order and order a fresh enquiry. This is to exercise the functions of an appellate authority in regard to

the Administrative Officer's past exercise of his powers. It is in no sense a limiting or guiding of the Administrative Officer in the exercise of his powers. Consequently no order can be passed by Government under section 27A(4) of the Act declaring that the punishment meted out to the two teachers by the Administrative Officer was illegal and that he should hold an inquiry. If the orders of the Administrative Officer reducing the two teachers in the present case are ultra vires. it would be competent for them to get them so declared by the Civil Court, for neither under the Act nor under the Primary Education Rules does any power vest either in Government or in the School Board to revise orders passed by the Administrative Officer under clause (d) of rule 41(1) of the Primary Education Rules. Further, the main ground for holding the orders of the Administrative Officer as illegal appears to be that he has not held any inquiry and has merely carried out the orders of the School Board. The proviso to clause (b)(iii)of rule 41(1) of the Primary Education Rules requires an inquiry to be held in cases where an order of removal or dismissal has to be passed. But for censuring, fining, reducing or suspending any teacher under clause (d) of rule 41(1) no such in-quiry is necessary. Consequently it is difficult to hold that the orders passed by the Administrative Officer are invalid, merely because he held no inquiry in the matter. It is not at any rate a matter for Government to decide. The aggrieved persons may seek relief in a court of law if they think fit.

Id/-
2/7/45.
Remembrancer of Legal Affairs.

U.R. to E.D., No. 4918, dated the 3rd July 1945.

MSR.
10/6.

Office of the R.L.A.

The District Local Board, Dharwar has carried out some special repairs to the office building of the District School Board, Dharwar and has asked for a grant-in-aid for the same. The question raised for the consideration of the R.L.A. is whether the term "building officers" in rule 13 of the Building Grant Rules in Schedule D to the Bombay Primary Education Rules, 1924 includes repairs to office buildings or whether it relates only to the construction of new office buildings.

2. The term "building" in rule 13 of the Rules for Building Grants and Grants for Sites in Schedule D to the Bombay Primary Education Rules, 1924 governs "offices, boarding houses gymnasia"; otherwise rule 13 will have to be construed as contemplating payment of grants-in-aid for maintenance of boarding houses and gymnasia, which could not be the intention of Government. Consequently "building" in rule 13 appears to mean constructing or erecting. The claim for grants-in-aid of repairing the District School Board office building, Dharwar cannot therefore be entertained under rule 13. The view taken in Educational Department office note at p.5 ante does not appear to be correct.

Id/-
6/7/45.
Remembrancer of Legal Affairs.

U/R. to E.D. No. 5029, dated the 9th July 1945.

MSR.
10/7.

L.D.R.I. No. 5179 dated 21-6-45.

Submitted.

Kindly see the Educational Department note at pages 23-25 ante. The view taken by the D.P.I. appears correct. Under sub-section (3) of section 27 of the Bombay Primary Education Act, 1923, Government has power only to accord sanction (or to with hold it) to the rules framed by the Local authority for carrying out the purposes of the Act. Government is not empowered to substitute a new rule for the one sent to it for sanction. Rule making powers of Government are mentioned in sub-section (1) of section 27 of the Act. Regulations regarding pension or gratuity or pension of inferior staff fall under clause (d) in sub-section (3) and a such, it must be left to the discretion of the Local authority whether to make rules or not in that behalf. In this connection R.L.A.'s opinions No. 4943, dated the 17th June 1942 and 6699 dated the 18th August 1942 may kindly be seen.

(It is regretted that this reference could not put up earlier as file O.Primary Education /42 was put up by B branch.

Id/-
16/7.

A.S. { Seen and returned
A { The view taken by the D.P.I. is correct.
Id/-
26/7.

A.A.L.R. I agree. Reply may be as at A.
Id/- R.T.K.
27/7.

R.L.A. Id/- P.N.M.
30/7/45.

U.O.R. to E.D. No. 3744, dt. 3/8/1945.

Office of the R.L.A.

The view taken in E.D. office note at p. 10 ante is correct. The Model Provident Fund in Schedule F to the Bombay Primary Education Rules, 1924, are not sttutory provisions. They are meant only for the guidance of local authorities who may or may not adopt them. It is not therefore necessary to publish any amendments thereto under section 27(2) of the Bombay Primary Education Act, 1923. The R.L.A.'s opinion No. 4793 dated 27th May 1941 has no application in the present case.

Id/-
13/5/45.
Remembrancer of Legal Affairs

U.R. to E.D. No. 6050 dated the 14th August 1945.

MSR.
10/7.

Office of the R.L.A.

The view taken in E.D. office note at page 5 ante is not correct. The benefit of explanation (e) under section 3A(f) of the Bombay Primary Education Act, 1923, cannot be extended to Mrs. Dixit, a medical practitioner, unless explanation (e) is suitably amended so as to include also a person professionlly engaged as a medical practitioner.

Id/-
24/8/45.
Remembrancer of Legal Affairs.

U.R. to E.D. No. 6306 dated the 25th August 1945.

MSR.
10/7.

Office of the R.L.A.

The legal position stated in Educational Department Office note at page 9 ante on all the points raised by the Administrative Officer of the School Board, Surat is correct. Since Mr. Pathan is a guaranteed teacher, it is essential that Government should take steps for his reinstatement. Under section 8(2) of the Bombay Primary Education Act, 1923 the existing and future rights liabilities, ditues and powers of the Provincial Government in respect of such teachers (i.e. guaranteed teachers) shall vest in and be exercised or performed by the local authority. It is, therefore, the duty of the local authority i.e. the Surat Muhicipality to et Mr. Pathan reinstated. Government should, therefore, write to the Surat Municipality and invite it-s attention to the recalcitrant attitude of its Administrative Officer.

Id/-

8/9/45.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 6660, dated the 12th September 1945.

MSR.
10/7.

Office of the R.L.A.

The hamlet of Sangamwadi, formerly included in the Poona Suburban Municipal area, has now been excluded from the limits of that Municipality under section 7 of the Bombay Municipal Boroughs Act, 1925, and included in the Kirkee Cantonment limits under section 4 of the Cantonments Act, 1924. The Primary school building at Sangamwadi was originally the property of the Poona Suburban Municipality. The cost of the building was presumably borne, partly or wholly by the residents of the hamlet either directly or indirectly. On 1st July 1938 the Poona Suburban Municipality ceased to be a local authority and all its primary schools with their lands, buildings records, equipments were transferred to the Poona City Municipality with effect from that date under section 6(1) of the Primary Education Act. On 13th November 1944 the hamlet of Sangamwadi was transferred from the limits of the Poona Suburban Municipality to the limits of the Kirkee Cantonment. The Poona City Municipality continued to manage the Sangamwadi primary school through its School Board for some time but as its position as the administering authority for the Sangamwadi school became legally untenable on transfer of the hamlet it discontinued its management of the school and closed it down with effect from 1st March 1945. The Kirkee Cantonment Board thereupon decided to run the school with effect from 1st June 1945 and with that end in view took over the Sangamwadi school building and furniture

from the Poona City Municipality on a monthly rent of Rs. 30/-. The D.P.I. in his letter dated the 17th July 1945 at page 1 ante presumes tht since the area of Sangamwadi has now been excluded from the municipal area and included in the Kirkee Cantonment limits all the property peraining to the school at Sangamwadi passes to the Cantonment Board. E.D. in para. 3 of its office not at page 5 ante observes:

> "Now that the Poona City Municipality has ceased to have jurisdiction over the Sangamwadi School and that the Kirkee Cantonment Board has validly taken over control of the School, the school with its lands, buildings records and equipment will, it seems, vest in the Cantonment Board. There does not appear to be a specific provision in the Primary Education Act providing for such a transfer. It seems, however, that the analogy of section 6 of the Primary Education Act will apply in the present case and the Poona City Municipality will have to transfer the Sangamwadi school with its land, building, equipment and records to the Kirkee Cantonment Board."

The R.L.A. is requested to state whether the view expressed by E.D. is correct.

2, It is no doubt true that the land, building and equipment of the Sangamwadi school were transferred from the Poona Suburban Municipality to the Poona City Municipality by virtue of section 6(1) of the Bombay Primary Education Act, 1923. But there is no provision in that Act under which the Poona City Municipality could be compelled to part with the building and equipment of the Sangamwadi school on its ceasing to be the local authority for that

school. There is no also no provision in the Cantonments Act, 1924, enabling the Kirkee Cantonment Board to claim possession of the school building and ~~xxxx~~ equipment from the Poona City Municipality on the Sangamwadi area being incorporatedwithin the limits of the Kirkee Cantonment. Nor is there anything in the Bombay Municipal ~~xx~~ ~~xx~~ Boroughs Act, 1925, entitling the Poona Suburban Municipality to resume possession of the school building and equipment on the Poona City Municipality ceasing to be a local authority in respect of the Sangamwadi area. The building and equipment of the Sangamwadi school would therefore continue to vest in the Poona City Municipality. The position is anomalous but there seems to be no way of divesting the Poona City Municipality of the building and equipment of the Sangamwadi school except by private negotiation or by recourse to legislation.

Id/-

21/9/45.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 7011,

dated the 24th September 1945.

MSR.
10/7.

Office of the R.L.A.

In exercise of the powers conferred by section 26-C(1) and (2)(b) of the Bombay Primary Education Act, 1923, Government, by its resolutions Nos. 7663 and 7663A dated the 7th October 1942, superseded the School Board, Ahmedabad, and directed that all the powers and duties which may, by or under any law for the time being in force, be exercised or performed by or on behalf of the said Municipal School Board, Ahmedabad, should, during the period of supersession of the said Board, be exercised and performed by a Committee of Management appointed in that behalf by Government. The period of supersession of the said School Board was extended upto 1st August 1947 under G.R.E.D. No. S.74(28) dated the 30th June 1944. Government has also superseded the Ahmedabad Municipality and appointed a Committee of Management. The Standing Committee appointed by the Committee of Management of Ahmedabad Municipality passed the following resolution on 27-6-1945:-

"The Standing Committee has fully considered this question from all its aspects. It has also considered the endorsement of the Chairman, Committee of Management. It is of opinion that as the School Board has on various occasions refused to supply necessary information regarding their resolutions to the local authority no useful purpose will be served by citing such instances. The Standing Committee resolves that under the present circumstances, administration of Girls' High Scholl and English Classes in Municipal Schools will more satisfactorily be made by the

Chief Officer or any other agency which may be thought fit by the L.A. in future."

Adopting that resolution of the Standing Committee the Committee of Management resolved:-

"All non-primary educational powers which have till now been delegated to the School Board are hereby withdrawn. The Chief Officer is requested to make necessary arrangement for managing all the matters connected with those delegated powers."

By his order M.U.N.A.290 dated the 24th July 1945 the Collector of Ahmedabad in exercise of the powers conferred on him by sub-section (1) of section 214 of the Bombay Municipal Boroughs Act, 1925, suspended that resolution of the Committee of Management, Ahmedabad Municipality, observing:-

"The Municipal School Board, Ahmedabad, has been superseded until 1-8-1947 and a Committee of Management appointed to exercise and perform all the powers and duties of the said School Board during the period of supersession (vide Government Order, Educational Department No. S.74(28) dated 30th June 1944). The Committee of Management, Ahmedabad Municipality, therefore, cannot have any authority to withdraw any powers and duties which the present Committee of Management, School Board, Ahmedabad, is, in virtue of the powers vested in it under the aforesaid Government Order, entitled to exercise and perform. The Resolution No. 501 dated 27th June 1945 passed by the Committee of Management, Ahmedabad Municipality, sanctioning to adopt the Resolution No. 536 dated 16-5-1945 of the Standing Committee must therefore be deemed void and ultra vires."

The Commissioner, N.D. considers that is is doubtful that the order of the Collector, though administratively defensible, is intra vires the provisions of section 214 of the Bombay Municipal Boroughs Act. The R.L.A. is requested to advise.

2. The order of the Collector, Ahmedabad, would not be intra vires the provisions of section 214(1) unless it is considered that the prosecution of the Managing Committee, Ahmedabad Municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. The order of the Collector, Ahmedabad, appears to assume that the withdrawal of the delegated powers vested in the committee of Management, School Board, Ahmedabad, by virtue of Government Order No.S. 74(28) dated the 30th June 1944. That assumption of the Collector is not correct. The Committee of Management, School Board Ahmedabad, is vested with those powers not by virtue of the aforesaid Government order, but by virtue of clause (b) of section 26-C(2) of the Bombay Primary Education Act, 1923. The G.R.E.D.No.S.74(28) dated the 30th June 1944 is merely a reproduction of section 26-C(2) in so far as it relates to the powers and duties of the Committee of Management, Ahmedabad Municipality has resolved to withdraw, fall within the ambit of sub-section (4) of section 4 of the Bombay Primary Education Act, which provides:-

> "The School Board shall further exercise such powers and perform such duties in respect of any educational purpose as may be delegated to it by the local authority or any such municipality as aforesaid."

* was unlawful, because the Committee of Management, Ahmedabad Municipality, was not competent so to do, when the powers

"To delegate to another is not to denude yourself. 'In my opinion the word in its general sense and as generally used does not imply or point to giving up of authority but rather the conferring of authority upon some one else'." (per Wills J. Juthe v. Clarke 25 Q.B.D. 391). (See Iyer's Law Lexicaon , p. 310). It is therefore apparent that although the non-primary educational powers have been delegated to the School Board, Ahmedabad, under section 4(4) it would still be open to the local authority to exercise those delegated powers even without withdrawing them. Consequently it was quite competent to the Managing Committee, Ahmedabad Municipality, to withdraw those powers from the Committer of Management, School Board, Ahmedabad. The resolution of the Committee of Management, Ahmedabad Municipality, is therefore intra vires.

3. As stated above the collector's order, suspending the resolution of the Committee of Management, Ahmedabad Municipality, was based on an incorrect assumption of the legal position of the Committee of Management, School Board, Ahmedabad. The Collector has not stated in his order that the resolution of the Committee of Management, Ahmedabad Municipality, was causing or was likely to cause injury or annoyance to the public or would lead to a breach of the peace. In the circumstances the order of the Collector of Ahmedabad, susp-ending the resolution of the Managing Committee, Ahmedabad Municipality, has no legal justifica-tion.

Id/-
12/10/45.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 7608 dated the 15th October 1945.

MSR.

The Commissioner, N.D. considers that is is doubtful that the order of the Collector, though administratively defensible, is intra vires the provisions of section 214 of the Bombay Municipal Boroughs Act. The R.L.A. is requested to advise.

2. The order of the Collector, Ahmedabad, would not be intra vires the provisions of section 214(1) unless it is considered that the prosecution of the Managing Committee, Ahmedabad Municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful. The order of the Collector, Ahmedabad, appears to assume that the withdrawal of the delegated powers* vested in the committee of Management, School Board, Ahmedabad, by virtue of Government Order No.S. 74(28) dated the 30th June 1944. That assumption of the Collector is not correct. The Committee of Management, School Board Ahmedabad, is vested with those powers not by virtue of the aforesaid Government order, but by virtue of clause (b) of section 26-C(2) of the Bombay Primary Education Act, 1923, The G.R.E.D.No.3.74(28) dated the 30th June 1944 is merely a reproduction of section 26-C(2) in so far as it relates to the powers and duties of the Committee of Management, Ahmedabad Municipality has resolved to withdraw, fall within the ambit of sub-section (4) of section 4 of the Bombay Primary Education Act, Which provides:-

> "The School Board shall further exercise such powers and perform such duties in respect of any educational purpose as may be delegated to it by the local authority or any such municipality as aforesaid."

* was unlawful, because the Committee of Management, Ahmedabad Municipality, was not competent so to do, when the powers

to hold that the election of a candidate who has been nominated in this irregular manner has been conducted in accordance with the principles laid down by the Act and that therefore the election is valid. Consequently the provision in rule (1) in Schedule L to the Bombay Primary Education Rules as to the time at which the nomination of candidates for the office of a member of the Provincial Board of Primary Education must be held to be mandatory. The date fixed by the Returning Officer under Schedule L in the present case for the receipt of nomination papers was the 24th September 1945. Mr. Shah's nomination paper though posted on the 22nd September was received by the Returning Officeron the 25th September. Since it was not received on the date fixed for receipt of nomination papers i.e. on the 24th September it was rightly rejected by the Returning Officer. Mr. Shah may be correct in presuming under section 114 of the Evidence Act that his nomination paper posted on the 22nd September would ordinarily be received by the Returning Officer on the 24th September, but that is a rebuttable presumption and Mr. Shah does not deny that the letter was in fact received on the 25th September. It is true that the delay in the receipt of the nomination paper by the Returning Officer was due to the dislocation of Railway traffic caused by heavy rains. But that would hardly be a justifiable ground for accepting Mr.Shah's nomination. It was on 27th August 1945 that a notice was issued announcing the latest date (24th September 1945) on which nomination papers must reach the Returning Officer. Mr. Shah thus had more than three weeks' time in which to send in his nomination paper. Residing as

Office of the R.L.A.

Rule 150 of the Bombay Primary Education Rules, 1923, provides that the election of members ofthe Provincial Board of Primary Education shall be in accordance with the procedure prescribed in Schedule L appended to those Rules. Rule (1) of the Rules in Schedule L lays down that the Returning Officer shall fix the date, hour and place for each of the following stages of election, namely:-

(a) receipt of nomination papers,

(b) scrutiny of nomination papers, and

(c) counting of votes.

Under rule (2) the notice of election stating the date fixed for (a) receipt of nomination papers, (b) scrutiny of nomination papers, and (c) counting of votes shall be forwarded to all the School Boards concerned, and shall also be published in the Official Gazette at least 8 weeks before the date fixed for the counting of votes and the date fixed for receipt of nomination papers shall not be less than 6 weeks before the date fixed for the counting of votes. Rule (3) provides that any two members of a School Board may nominate as a candidate any person who has attained the age of 21 years and holding the requisite qualification by sending to or delivering at the office of the Returning Officer a nomination paper in the prescribed form. In Cutting v. Windsor (1924, 40 T.L.R. 395) it was held that the provision as to the time at which nomination of candidates for the office of borough councillor must be delivered is mandatory and if the rule is not complied with it is not competent for the Court to

he does in far x away xx Jambusar he should have realised the necessity of posting his nomination paper w~ell in time. If he deliberately chooses to delay sending in his nomination paper till the ver; last and then finds that his nomination paper did not reach its destination in time owing to unforeseen circumstances he has himself to blame. Consequently, Mr. Shah's contention that he was unable to send in his nomination paper in time for reasons beyond his control is not a valid excuse and no deviation from the provisions in Schedule L would be legally justifiable.

Id/- P.N.M.
3/11/45.
Remembrancer of Legal Affairs.

U.R. to E.D., No. 8244, dated the
6th November 1945.

MSR.
11/7.

Office of the R.L.A.

A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently unintentional" (see Maxwell, p. 13). Rule 13 of the Rules in Schedule D to the Bombay Primary Education Rules, 1923, admits of no other reasonable construction than what has been stated by the R.L.A. in his opinion No. 5029 dated 9th July 1945; and the analogy of rules 114 and 115 of the Primary Education Rules will have no application. The proper course would be to amend rule 13 in Schedule D to the Bombay Primary Education Rules.

Id/-
10/11/45.
Remembrancer of Legal Affairs.

U.R. to E.D., No. 8429 , dated the
12th November 1945.

MSR.
11/7.

Office of the R.L.A.

The first question raised for the consideration of the R.L.A. is whether the primary school teachers, who retired from servie before the transfer of control of Primary Education to the local authorites under the Bombay Primary Education Act, 1923, were Government servants.

2. Under clause (d) of section 30 of the Bombay Local Boards Act, 1884, then in force it was an obligatory dusty of a local board to make provision for the visiting and maintenance of and the training of teachers for primary schools, and the general development and extension of primary education; and under section 48 the expenditure for primary education was to be incurred from the local fund. Consequently the view taken by Accountant General at p. 4 ante that the pay of the primary teachers was met from the local fund supplemented by a grant-in-aid from Government is correct. But that alone would not warrant an inference that the primary teachers were servants of local boards. Under section 38 of the Bombay Local Boards Act, 1884, every district local board was required to prepare and sanction a schedule of the staff to be maintained by it setting forth the designation and grades of different officers and servants, their respective duties and the amount and nature of salaries, fees and allowances to be paid to each and determining whihh of the s aid officers and servants are to be maintained permanently and which temporarily only. In his report at page 9 ante the D.P.I. observes:

"These teachers were under the administrative control of the Educational Department, their conditions of s-ervice were prescribed by Government and they were in all respects treated as Government servants. Since the authority competent to make appointments of these teachers, to lay down their conditions of service or to inflict punishment on them was Government or an officer of Government to do these duties, they must, I think, be looked upon as Government servants even if their pay was not paid from Government funds.

If as reported by the D.P.I. the primary teachers were appointed by Government and governed by the conditions of service laid down by Government, those teachers could not have been borne on the Schedule of staff prepared and maintained by local boards under section 38 in which case they could not at all be considered servants of local boards. If so, the only reasonable inference would be that those teachers were considered to be servants of Government. This inference is further reinforced by the unequivocal statutory recognition of the legal position of primary teachers who were taken over by local authorites when the control of primary education was transferred to them (see section 8 of the Bombay Primary Education Act, 1923, and rules 5(2) and 47(2) of the Rules thereunder). A similar view was taken by the R.L.A. in his opinion No. 1758 dated 1-9-1924 to which the attention of E.D. is invited.

3. The second question referred to the R.L.A. is whether, if such teachers were treated as Government servants before the transfer of control of primary education to the local authority, it would be legal to grant them increased pension from 1-4-45 when Government has in fact sanctioned increased pensions to all

classes of Government pensioners increased with ~~xxxxxxx~~ effect from 1-11-43. Under G.R.,F.D. No. 174 dated 16-12-43 all pensioners of the Government of Bombay have been granted a temporary increase in their pensions on the scales laid down therein with effect from 1-11-43. Since the primary school teachers who retired before the transfer of control of Primary Education to the local authorities must be considered to be Government servants it is but equitable that they should receive the benefit of increased pensions granted to all Government pensioners. It is, however, a matter for the administrative Department todecide. Such increase in payment of pension is ex gratia and no one can claim it as a matter of right.

Id/-
13/12/45
Remembrancer of Legal Affairs.

U.R. to H.D., No. 9386, dated the 13th December 1945.

MSR.
11/7.

Office of the R.L.A.

There is no substance in the contention of the District School Board, Broach. All offences are against the Crown and the prosecutor in all criminal case is the Crown. It was not at the instance of the Postal Department that the primary teacher Prabhudas Lalbhai was suspended; but his suspension was in virtue of powers vested in the Board. Consequently the Postal Department cannot either in law or in quity be held liable to pay Mr. Prabhudas Lalbhai for the period of his suspension. The view taken in E.D. office note at p. 21 is not correct.

Id/-
22/12/45.

Remembrancer of legal Affairs.

U.R. to E.D., No. 9660, dated the 27th December 1945.
MSR.